IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 7 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH Sd/-
and
Hon'ble MR.JUSTICE D.A.MEHTA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KAIRA DIST CO.OP MILK PRODUCERUNION

Versus

COMMISSIONER OF INCOME-TAX

Appearance:

MR JP SHAH for Petitioner No. 1

MR AKIL QURESHI FOR MR MANISH R BHATT

for Respondent.

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE D.A.MEHTA

Date of decision: 04/10/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE D.A.MEHTA)

The following three questions have been referred under section 256(2) of the Income Tax Act,1961 by the Income Tax Appellate Tribunal, Ahmedabad Bench "B" at the instance of the assessee :

(1) "Whether, on the facts and in the circumstances of the case, the appellate Tribunal was right in its interpretation and application of section 35-C of the I.T.Act,1961 ?"

(2) "Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in holding that entire expenditure of Rs.57,39,360/- was not eligible for weighted deduction u/s. 35-C of the Income-tax Act ?"

(3) Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in holding that only 10% of the expenses incurred on dissemination of information or demonstration of modern techniques and methods of agricultural annual husbandry or dairy or poultry farming or advice on such technique or method is eligible for deduction u/s.35-C of the I.T.Act ?"

2 We have heard Mr.J.P.Shah, learned Counsel for the applicant-assessee and Mr.Akil Qureshi, learned Standing Counsel for the revenue.

3 The questions referred to us stand answered in the reference between the same parties in Income Tax Reference No. 32 of 1987 by our decision dated 2/7/2001. Following the aforesaid decision all the three questions are answered in the negative i.e. in favour of the assessee and against the revenue. The Tribunal was not right in its interpretation and application of section 35C of the Act and the assessee would be entitled to deduction of entire expenditure incurred under section 35C of the Act.

4 The reference stands disposed of accordingly with no order as to costs.

Sd/- Sd/-

(M.S.Shah,J) (D.A.Mehta,J)

m.m.bhatt